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(Original Signature of Member)

106<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R.** \_\_\_\_\_

\_\_\_\_\_  
IN THE HOUSE OF REPRESENTATIVES

Mr. ARCHER introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To amend the Internal Revenue Code of 1986 to repeal  
the provisions relating to foreign sales corporations  
(FSCs) and to exclude extraterritorial income from gross  
income.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “FSC Repeal and Extraterritorial Income Exclusion Act  
4 of 2000”.

5 (b) AMENDMENT OF 1986 CODE.—Except as other-  
6 wise expressly provided, whenever in this Act an amend-  
7 ment or repeal is expressed in terms of an amendment  
8 to, or repeal of, a section or other provision, the reference  
9 shall be considered to be made to a section or other provi-  
10 sion of the Internal Revenue Code of 1986.

11 **SEC. 2. REPEAL OF FOREIGN SALES CORPORATION RULES.**

12 Subpart C of part III of subchapter N of chapter 1  
13 (relating to taxation of foreign sales corporations) is here-  
14 by repealed.

15 **SEC. 3. TREATMENT OF EXTRATERRITORIAL INCOME.**

16 (a) IN GENERAL.—Part III of subchapter B of chap-  
17 ter 1 (relating to items specifically excluded from gross  
18 income) is amended by inserting before section 115 the  
19 following new section:

20 **“SEC. 114. EXTRATERRITORIAL INCOME.**

21 “(a) EXCLUSION.—Gross income shall not include  
22 extraterritorial income.

23 “(b) EXCEPTION.—Subsection (a) shall not apply to  
24 extraterritorial income which is not qualifying foreign  
25 trade income as determined under subpart E of part III  
26 of subchapter N.

1 “(c) DISALLOWANCE OF DEDUCTIONS.—

2 “(1) IN GENERAL.—Any deduction of a tax-  
3 payer allocated under paragraph (2) to  
4 extraterritorial income of the taxpayer excluded from  
5 gross income under subsection (a) shall not be al-  
6 lowed.

7 “(2) ALLOCATION.—Any deduction of the tax-  
8 payer properly apportioned and allocated to the  
9 extraterritorial income derived by the taxpayer from  
10 any transaction shall be allocated on a proportionate  
11 basis between—

12 “(A) the extraterritorial income derived  
13 from such transaction which is excluded from  
14 gross income under subsection (a), and

15 “(B) the extraterritorial income derived  
16 from such transaction which is not so excluded.

17 “(d) DENIAL OF CREDITS FOR CERTAIN FOREIGN  
18 TAXES.—Notwithstanding any other provision of this  
19 chapter, no credit shall be allowed under this chapter for  
20 any income, war profits, and excess profits taxes paid or  
21 accrued with respect to extraterritorial income which is ex-  
22 cluded from gross income under subsection (a).

23 “(e) EXTRATERRITORIAL INCOME.—For purposes of  
24 this section, the term ‘extraterritorial income’ means the  
25 gross income of the taxpayer attributable to foreign trad-

1 ing gross receipts (as defined in section 942) of the tax-  
2 payer.”

3 (b) QUALIFYING FOREIGN TRADE INCOME.—Part III  
4 of subchapter N of chapter 1 is amended by inserting after  
5 subpart D the following new subpart:

6 **“Subpart E—Qualifying Foreign Trade Income**

“Sec. 941. Qualifying foreign trade income.

“Sec. 942. Foreign trading gross receipts.

“Sec. 943. Other definitions and special rules.

7 **“SEC. 941. QUALIFYING FOREIGN TRADE INCOME.**

8 “(a) QUALIFYING FOREIGN TRADE INCOME.—For  
9 purposes of this subpart and section 114—

10 “(1) IN GENERAL.—The term ‘qualifying for-  
11 eign trade income’ means, with respect to any trans-  
12 action, the amount of gross income which, if ex-  
13 cluded, will result in a reduction of the taxable in-  
14 come of the taxpayer from such transaction equal to  
15 the greatest of—

16 “(A) 30 percent of the foreign sale and  
17 leasing income derived by the taxpayer from  
18 such transaction,

19 “(B) 1.2 percent of the foreign trading  
20 gross receipts derived by the taxpayer from the  
21 transaction, or

1                   “(C) 15 percent of the foreign trade in-  
2                   come derived by the taxpayer from the trans-  
3                   action.

4                   In no event shall the amount determined under sub-  
5                   paragraph (B) exceed 200 percent of the amount de-  
6                   termined under subparagraph (C).

7                   “(2) ALTERNATIVE COMPUTATION.—A taxpayer  
8                   may compute its qualifying foreign trade income  
9                   under a subparagraph of paragraph (1) other than  
10                  the subparagraph which results in the greatest  
11                  amount of such income.

12                  “(3) LIMITATION ON USE OF FOREIGN TRADING  
13                  GROSS RECEIPTS METHOD.—If any person computes  
14                  its qualifying foreign trade income from any trans-  
15                  action with respect to any property under paragraph  
16                  (1)(B), the qualifying foreign trade income of any  
17                  related person with respect to any transaction in-  
18                  volving such property shall be zero.

19                  “(4) RULES FOR MARGINAL COSTING.—The  
20                  Secretary shall prescribe regulations setting forth  
21                  rules for the allocation of expenditures in computing  
22                  foreign trade income under paragraph (1)(C) in  
23                  those cases where a taxpayer is seeking to establish  
24                  or maintain a market for qualifying foreign trade  
25                  property.

1           “(5) PARTICIPATION IN INTERNATIONAL BOY-  
2           COTTS, ETC.—Under regulations prescribed by the  
3           Secretary, the qualifying foreign trade income of a  
4           taxpayer for any taxable year shall be reduced (but  
5           not below zero) by the sum of—

6                   “(A) an amount equal to such income mul-  
7                   tiplied by the international boycott factor deter-  
8                   mined under section 999, and

9                   “(B) any illegal bribe, kickback, or other  
10                  payment (within the meaning of section 162(c))  
11                  paid by or on behalf of the taxpayer directly or  
12                  indirectly to an official, employee, or agent in  
13                  fact of a government.

14          “(b) FOREIGN TRADE INCOME.—

15                  “(1) IN GENERAL.—For purposes of this sub-  
16                  part, the term ‘foreign trade income’ means the tax-  
17                  able income of the taxpayer attributable to foreign  
18                  trading gross receipts of the taxpayer.

19                  “(2) SPECIAL RULE FOR COOPERATIVES.—In  
20                  any case in which an organization to which part I  
21                  of subchapter T applies which is engaged in the  
22                  marketing of agricultural or horticultural products  
23                  sells qualifying foreign trade property, in computing  
24                  the taxable income of such cooperative, there shall  
25                  not be taken into account any deduction allowable

1 under subsection (b) or (c) of section 1382 (relating  
2 to patronage dividends, per-unit retain allocations,  
3 and nonpatronage distributions).

4 “(c) FOREIGN SALE AND LEASING INCOME.—For  
5 purposes of this section, the term ‘foreign sale and leasing  
6 income’ means, with respect to any transaction—

7 “(1) foreign trade income properly allocable to  
8 activities—

9 “(A) which are described in paragraph  
10 (2)(A)(i) or (3) of section 942(b), and

11 “(B) which are performed by the taxpayer  
12 (or any person acting under a contract with  
13 such taxpayer) outside the United States, and

14 “(2) foreign trade income derived by the tax-  
15 payer from the lease or rental of qualifying foreign  
16 trade property for use by the lessee outside the  
17 United States.

18 Foreign sale and leasing income shall not include any in-  
19 come properly allocable to excluded property described in  
20 subparagraph (B) of section 943(a)(3) (relating to intan-  
21 gibles).

22 **“SEC. 942. FOREIGN TRADING GROSS RECEIPTS.**

23 “(a) FOREIGN TRADING GROSS RECEIPTS.—

24 “(1) IN GENERAL.—Except as otherwise pro-  
25 vided in this section, for purposes of this subpart,

1       the term ‘foreign trading gross receipts’ means the  
2       gross receipts of the taxpayer which are—

3               “(A) from the sale, exchange, or other dis-  
4       position of qualifying foreign trade property,

5               “(B) from the lease or rental of qualifying  
6       foreign trade property for use by the lessee out-  
7       side the United States,

8               “(C) for services which are related and  
9       subsidiary to—

10              “(i) any sale, exchange, or other dis-  
11       position of qualifying foreign trade prop-  
12       erty by such taxpayer, or

13              “(ii) any lease or rental of qualifying  
14       foreign trade property described in sub-  
15       paragraph (B) by such taxpayer,

16              “(D) for engineering or architectural serv-  
17       ices for construction projects located (or pro-  
18       posed for location) outside the United States, or

19              “(E) for the performance of managerial  
20       services for a person other than a related per-  
21       son in furtherance of the production of foreign  
22       trading gross receipts described in subpara-  
23       graph (A), (B), or (C).

24       Subparagraph (E) shall not apply to a taxpayer for  
25       any taxable year unless at least 50 percent of its for-



1       eign trading gross receipts (determined without re-  
2       gard to this sentence) for such taxable year is de-  
3       rived from activities described in subparagraph (A),  
4       (B), or (C).

5               “(2) CERTAIN RECEIPTS EXCLUDED ON BASIS  
6       OF USE; SUBSIDIZED RECEIPTS EXCLUDED.—The  
7       term ‘foreign trading gross receipts’ shall not in-  
8       clude receipts of a taxpayer from a transaction if—

9               “(A) the qualifying foreign trade property  
10       or services—

11               “(i) are for ultimate use in the United  
12       States, or

13               “(ii) are for use by the United States  
14       or any instrumentality thereof and such  
15       use of qualifying foreign trade property or  
16       services is required by law or regulation, or

17               “(B) such transaction is accomplished by a  
18       subsidy granted by the United States or any in-  
19       strumentality thereof.

20               “(3) ELECTION TO EXCLUDE CERTAIN RE-  
21       CEIPTS.—The term ‘foreign trading gross receipts’  
22       shall not include gross receipts of a taxpayer from  
23       a transaction with respect to any property if the tax-  
24       payer elects not to have such receipts taken into ac-  
25       count for purposes of this subpart.

1       “(b) FOREIGN ECONOMIC PROCESS REQUIRE-  
2 MENTS.—

3               “(1) IN GENERAL.—Except as provided in sub-  
4 section (c), a taxpayer shall be treated as having for-  
5 eign trading gross receipts from any transaction only  
6 if economic processes with respect to such trans-  
7 action take place outside the United States as re-  
8 quired by paragraph (2).

9               “(2) REQUIREMENT.—

10               “(A) IN GENERAL.—The requirements of  
11 this paragraph are met with respect to the  
12 gross receipts of a taxpayer derived from any  
13 transaction if—

14                       “(i) such taxpayer (or any person act-  
15 ing under a contract with such taxpayer)  
16 has participated outside the United States  
17 in the solicitation (other than advertising),  
18 the negotiation, or the making of the con-  
19 tract relating to such transaction, and

20                       “(ii) the foreign direct costs incurred  
21 by the taxpayer attributable to the trans-  
22 action equal or exceed 50 percent of the  
23 total direct costs attributable to the trans-  
24 action.

1           “(B) ALTERNATIVE 85-PERCENT TEST.—A  
2 taxpayer shall be treated as satisfying the re-  
3 quirements of subparagraph (A)(ii) with respect  
4 to any transaction if, with respect to each of at  
5 least 2 subparagraphs of paragraph (3), the  
6 foreign direct costs incurred by such taxpayer  
7 attributable to activities described in such sub-  
8 paragraph equal or exceed 85 percent of the  
9 total direct costs attributable to activities de-  
10 scribed in such subparagraph.

11           “(C) DEFINITIONS.—For purposes of this  
12 paragraph—

13           “(i) TOTAL DIRECT COSTS.—The term  
14 ‘total direct costs’ means, with respect to  
15 any transaction, the total direct costs in-  
16 curred by the taxpayer attributable to ac-  
17 tivities described in paragraph (3) per-  
18 formed at any location by the taxpayer or  
19 any person acting under a contract with  
20 such taxpayer.

21           “(ii) FOREIGN DIRECT COSTS.—The  
22 term ‘foreign direct costs’ means, with re-  
23 spect to any transaction, the portion of the  
24 total direct costs which are attributable to

1 activities performed outside the United  
2 States.

3 “(3) ACTIVITIES RELATING TO QUALIFYING  
4 FOREIGN TRADE PROPERTY.—The activities de-  
5 scribed in this paragraph are any of the following  
6 with respect to qualifying foreign trade property—

7 “(A) advertising and sales promotion,

8 “(B) the processing of customer orders  
9 and the arranging for delivery,

10 “(C) transportation from the time of ac-  
11 quisition by the taxpayer (or, in the case of a  
12 commission relationship, from the beginning of  
13 such relationship for such transaction) to the  
14 delivery to the customer,

15 “(D) the determination and transmittal of  
16 a final invoice or statement of account and the  
17 receipt of payment, and

18 “(E) the assumption of credit risk.

19 “(4) ECONOMIC PROCESSES PERFORMED BY  
20 RELATED PERSONS.—A taxpayer shall be treated as  
21 meeting the requirements of this subsection with re-  
22 spect to any transaction involving any property if  
23 any related person has met such requirements in  
24 such transaction or any other transaction involving  
25 such property.

1       “(c) EXCEPTION FROM FOREIGN ECONOMIC PROC-  
2    ESS REQUIREMENT.—

3               “(1) IN GENERAL.—The requirements of sub-  
4       section (b) shall be treated as met for any taxable  
5       year if the foreign trading gross receipts of the tax-  
6       payer for such year do not exceed \$5,000,000.

7               “(2) RECEIPTS OF RELATED PERSONS AGGRE-  
8       GATED.—All related persons shall be treated as one  
9       person for purposes of paragraph (1), and the limi-  
10      tation under paragraph (1) shall be allocated among  
11      such persons in a manner provided in regulations  
12      prescribed by the Secretary.

13              “(3) SPECIAL RULE FOR PASS-THRU ENTI-  
14      TIES.—In the case of a partnership, S corporation,  
15      or other pass-thru entity, the limitation under para-  
16      graph (1) shall apply with respect to the partner-  
17      ship, S corporation, or entity and with respect to  
18      each partner, shareholder, or other owner.

19    **“SEC. 943. OTHER DEFINITIONS AND SPECIAL RULES.**

20              “(a) QUALIFYING FOREIGN TRADE PROPERTY.—For  
21      purposes of this subpart—

22                   “(1) IN GENERAL.—The term ‘qualifying for-  
23      eign trade property’ means property—

24                           “(A) manufactured, produced, grown, or  
25                           extracted within or outside the United States,

1           “(B) held primarily for sale, lease, or rent-  
2           al, in the ordinary course of trade or business  
3           for direct use, consumption, or disposition out-  
4           side the United States, and

5           “(C) not more than 50 percent of the fair  
6           market value of which is attributable to articles  
7           manufactured, produced, grown, or extracted  
8           outside the United States or other value added  
9           outside the United States.

10          For purposes of subparagraph (C), the fair market  
11          value of any article imported into the United States  
12          shall be its appraised value, as determined by the  
13          Secretary under section 402 of the Tariff Act of  
14          1930 (19 U.S.C. 1401a) in connection with its im-  
15          portation.

16          “(2) U.S. TAXATION TO ENSURE CONSISTENT  
17          TREATMENT.—Property which (without regard to  
18          this paragraph) is qualifying foreign trade property  
19          and which is manufactured, produced, grown, or ex-  
20          tracted outside the United States shall be treated as  
21          qualifying foreign trade property only if it is manu-  
22          factured, produced, grown, or extracted by—

23                 “(A) a domestic corporation,

24                 “(B) an individual who is a citizen or resi-  
25                 dent of the United States,

1           “(C) a foreign corporation with respect to  
2           which an election under subsection (e) (relating  
3           to foreign corporations electing to be subject to  
4           United States taxation) is in effect, or

5           “(D) a partnership or other pass-thru enti-  
6           ty all of the partners or owners of which are de-  
7           scribed in subparagraph (A), (B), or (C).

8       Except as otherwise provided by the Secretary,  
9       tiered partnerships or pass-thru entities shall be  
10      treated as described in subparagraph (D) if each of  
11      the partnerships or entities is directly or indirectly  
12      wholly owned by persons described in subparagraph  
13      (A), (B), or (C).

14           “(3) EXCLUDED PROPERTY.—The term ‘quali-  
15      fying foreign trade property’ shall not include—

16           “(A) property leased or rented by the tax-  
17      payer for use by any related person,

18           “(B) patents, inventions, models, designs,  
19      formulas, or processes whether or not patented,  
20      copyrights (other than films, tapes, records, or  
21      similar reproductions, and other than computer  
22      software (whether or not patented), for com-  
23      mercial or home use), goodwill, trademarks,  
24      trade brands, franchises, or other like property,

1                   “(C) oil or gas (or any primary product  
2                   thereof),

3                   “(D) products the transfer of which is pro-  
4                   hibited or curtailed to effectuate the policy set  
5                   forth in paragraph (2)(C) of section 3 of Public  
6                   Law 96–72, or

7                   “(E) any unprocessed timber which is a  
8                   softwood.

9                   For purposes of subparagraph (E), the term ‘un-  
10                  processed timber’ means any log, cant, or similar  
11                  form of timber.

12                  “(4) PROPERTY IN SHORT SUPPLY.—If the  
13                  President determines that the supply of any prop-  
14                  erty described in paragraph (1) is insufficient to  
15                  meet the requirements of the domestic economy, the  
16                  President may by Executive order designate the  
17                  property as in short supply. Any property so des-  
18                  ignated shall not be treated as qualifying foreign  
19                  trade property during the period beginning with the  
20                  date specified in the Executive order and ending  
21                  with the date specified in an Executive order setting  
22                  forth the President’s determination that the prop-  
23                  erty is no longer in short supply.

24                  “(b) OTHER DEFINITIONS AND RULES.—For pur-  
25                  poses of this subpart—



1 “(1) TRANSACTION.—

2 “(A) IN GENERAL.—The term ‘transaction’  
3 means—

4 “(i) any sale, exchange, or other dis-  
5 position,

6 “(ii) any lease or rental, and

7 “(iii) any furnishing of services.

8 “(B) GROUPING OF TRANSACTIONS.—To  
9 the extent provided in regulations, any provision  
10 of this subpart which, but for this subpara-  
11 graph, would be applied on a transaction-by-  
12 transaction basis may be applied by the tax-  
13 payer on the basis of groups of transactions  
14 based on product lines or recognized industry or  
15 trade usage. Such regulations may permit dif-  
16 ferent groupings for different purposes.

17 “(2) UNITED STATES DEFINED.—The term  
18 ‘United States’ includes the Commonwealth of Puer-  
19 to Rico. The preceding sentence shall not apply for  
20 purposes of determining whether a corporation is a  
21 domestic corporation.

22 “(3) RELATED PERSON.—A person shall be re-  
23 lated to another person if such persons are treated  
24 as a single employer under subsection (a) or (b) of  
25 section 52 or subsection (m) or (o) of section 414.

1           “(4) GROSS AND TAXABLE INCOME.—Section  
2       114 shall not be taken into account in determining  
3       the amount of gross income or foreign trade income  
4       from any transaction.

5           “(c) SOURCE RULE.—Under regulations, the foreign  
6       trade income of a taxpayer from any transaction which  
7       is treated as from sources without the United States shall  
8       not exceed—

9           “(1) in the case of a taxpayer computing its  
10      qualifying foreign trade income under section  
11      941(a)(1)(B), the amount of the taxpayer’s foreign  
12      trade income which would (but for this subsection)  
13      be treated as from sources without the United  
14      States if the foreign trade income were reduced by  
15      an amount equal to 4 percent of the foreign trading  
16      gross receipts with respect to the transaction, and

17          “(2) in the case of a taxpayer computing its  
18      qualifying foreign trade income under section  
19      941(a)(1)(C), 50 percent of the amount of the tax-  
20      payer’s foreign trade income which would (but for  
21      this subsection) be treated as from sources without  
22      the United States.

23          “(d) TREATMENT OF WITHHOLDING TAXES.—

24          “(1) IN GENERAL.—For purposes of section  
25      114(d), any withholding tax (as defined in section

1       901(k)(1)(B)) shall not be treated as paid or ac-  
2       crued with respect to extraterritorial income which is  
3       excluded from gross income under section 114(a).

4           “(2) EXCEPTION.—Paragraph (1) shall not  
5       apply to any taxpayer with respect to extraterritorial  
6       income from any transaction if the taxpayer com-  
7       putes its qualifying foreign trade income with re-  
8       spect to the transaction under section 941(a)(1)(A).

9       “(e) ELECTION TO BE TREATED AS DOMESTIC COR-  
10      PORATION.—

11           “(1) IN GENERAL.—An applicable foreign cor-  
12      poration may elect to be treated as a domestic cor-  
13      poration for all purposes of this title if such corpora-  
14      tion waives all benefits to such corporation granted  
15      by the United States under any treaty.

16           “(2) APPLICABLE FOREIGN CORPORATION.—  
17      For purposes of paragraph (1), the term ‘applicable  
18      foreign corporation’ means any foreign corporation  
19      if, at the time of the election—

20           “(A) such corporation manufactures, pro-  
21      duces, grows, or extracts property in the ordi-  
22      nary course of such corporation’s trade or busi-  
23      ness, or

1           “(B) substantially all of the gross receipts  
2           of such corporation may reasonably be expected  
3           to be foreign trading gross receipts.

4           “(3) PERIOD OF ELECTION.—

5           “(A) IN GENERAL.—Except as provided in  
6           subparagraph (B), an election under paragraph  
7           (1) shall apply to the taxable year for which  
8           made and all subsequent taxable years unless  
9           revoked.

10          “(B) TERMINATION.—If a corporation  
11          which made an election under paragraph (1) for  
12          any taxable year fails to meet the requirements  
13          of subparagraph (A) or (B) of paragraph (2)  
14          for any subsequent taxable year, such election  
15          shall not apply to any taxable year beginning  
16          after such subsequent taxable year.

17          “(4) SPECIAL RULES.—

18          “(A) REQUIREMENTS.—This subsection  
19          shall not apply to an applicable foreign corpora-  
20          tion unless such corporation meets such re-  
21          quirements as the Secretary shall prescribe to  
22          ensure that the taxes imposed by this chapter  
23          on such corporation are paid.

24          “(B) EFFECT OF ELECTION OR TERMI-  
25          NATION.—

“(i) ELECTION.—For purposes of section 367, a foreign corporation making an election under this subsection shall be treated as transferring (as of the first day of the first taxable year to which the election applies) all of its assets to a domestic corporation in connection with an exchange to which section 354 applies.

9 “(ii) **TERMINATION.**—For purposes of  
10 section 367, if—

“(I) an election is made by a corporation under paragraph (1) for any taxable year, and

“(II) such election ceases to  
apply for any subsequent taxable year,  
such corporation shall be treated as a domestic  
corporation transferring (as of the 1st day of  
such subsequent taxable year) all of its property  
to a foreign corporation in connection with an  
exchange to which section 354 applies.

21 “(C) ELIGIBILITY FOR ELECTION.—The  
22 Secretary may by regulation designate one or  
23 more classes of corporations which may not  
24 make the election under this subsection.

1       “(f) RULES RELATING TO ALLOCATIONS OF QUALI-  
2       FYING FOREIGN TRADE INCOME FROM SHARED PART-  
3       NERSHIPS.—If—

4               “(1) a partnership maintains a separate ac-  
5       count for transactions (to which this subpart ap-  
6       plies) with each partner,

7               “(2) distributions to each partner with respect  
8       to such transactions are based on the amounts in  
9       the separate account maintained with respect to  
10      such partner, and

11              “(3) such partnership meets such other require-  
12      ments as the Secretary may by regulations prescribe,  
13      then such partnership shall allocate to each partner items  
14      of income, gain, loss, and deduction (including qualifying  
15      foreign trade income) from any transaction to which this  
16      subpart applies on the basis of such separate account.”

17   **SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS.**

18              (1)   The   second   sentence   of   section  
19      56(g)(4)(B)(i) is amended by inserting before the  
20      period “or under section 114”.

21              (2) Section 275(a) is amended—

22                      (A) by striking “or” at the end of para-  
23                      graph (4)(A), by striking the period at the end  
24                      of paragraph (4)(B) and inserting “, or”, and

1 by adding at the end of paragraph (4) the fol-  
2 lowing new subparagraph:

3 “(C) such taxes are paid or accrued with  
4 respect to qualifying foreign trade income (as  
5 defined in section 941).”, and

6 (B) by adding at the end the following the  
7 following new sentence: “A rule similar to the  
8 rule of section 943(d) shall apply for purposes  
9 of paragraph (4)(C).”

10 (3) Paragraph (3) of section 864(e) is  
11 amended—

12 (A) by striking “For purposes of” and in-  
13 serting:

14 “(A) IN GENERAL.—For purposes of”, and

15 (B) by adding at the end the following new  
16 subparagraph:

17 “(B) ASSETS PRODUCING EXEMPT  
18 EXTRATERRITORIAL INCOME.—For purposes of  
19 allocating and apportioning any interest ex-  
20 pense, there shall not be taken into account any  
21 qualifying foreign trade property (as defined in  
22 section 943(a)) which is located outside the  
23 United States (as defined in section 943(b)(2))  
24 and which is held by the taxpayer for lease or  
25 rental in the ordinary course of trade or busi-

1           ness for use by the lessee outside the United  
2           States (as so defined).”

3           (4) Section 999(c)(1) is amended by inserting  
4           “941(a)(5),” after “908(a),”.

5           (5) The table of sections for part III of sub-  
6           chapter B of chapter 1 is amended by inserting be-  
7           fore the item relating to section 115 the following  
8           new item:

                  “Sec. 114. Extraterritorial income.”

9           (6) The table of subparts for part III of sub-  
10          chapter N of chapter 1 is amended by striking the  
11          item relating to subpart E and inserting the fol-  
12          lowing new item:

                  “Subpart E. Qualifying foreign trade income.”

13   **SEC. 5. EFFECTIVE DATE.**

14          (a) IN GENERAL.—The amendments made by this  
15          Act shall apply to transactions after September 30, 2000.

16          (b) NO NEW FSCs.—No corporation may elect after  
17          September 30, 2000, to be a FSC (as defined in section  
18          922 of the Internal Revenue Code of 1986, as in effect  
19          before the amendments made by this Act).

20          (c) TRANSITION PERIOD FOR EXISTING FOREIGN  
21          SALES CORPORATIONS.—Except as provided in subsection  
22          (d)—

23                 (1) IN GENERAL.—In the case of any trans-  
24          action in the ordinary course of trade or business in-



1       volving a FSC (as so defined) in existence on Sep-  
2       tember 30, 2000, and at all times thereafter, the  
3       amendments made by this Act shall not apply to—

4               (A) transactions by the FSC before Janu-  
5       ary 1, 2002, and

6               (B) transactions by the FSC after Decem-  
7       ber 31, 2001, pursuant to a binding contract  
8       (by the FSC) in effect on September 30, 2000,  
9       and at all times thereafter.

10       (2) ELECTION TO HAVE AMENDMENTS APPLY  
11       EARLIER.—A taxpayer may elect to have the amend-  
12       ments made by this Act apply to any transaction by  
13       a FSC to which such amendments would apply but  
14       for the application of paragraph (1). Such election  
15       shall be effective for the taxable year for which made  
16       and all subsequent taxable years, and, once made,  
17       may be revoked only with the consent of the Sec-  
18       retary of the Treasury.

19       (d) CONSISTENT TREATMENT REQUIRED.—If, but  
20       for this subsection, the amendments made by this Act  
21       would apply to some but not all of the transactions in the  
22       ordinary course of trade or business by related parties in-  
23       volving the same property, such parties shall elect, at such  
24       time and in such manner as the Secretary of the Treasury

- 1 shall prescribe, whether to have such amendments apply
- 2 to all or none of such transactions.